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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,953	02/12/2004	Steve Johnson	4023M	5353

7590  
S. Michael Bender  
P.O. Box 530399  
St. Petersburg, FL 33747

09/21/2007

EXAMINER
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DICUS, TAMRA

ART UNIT	PAPER NUMBER
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1774

MAIL DATE	DELIVERY MODE
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09/21/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/777,953

Applicant(s)

JOHNSON, STEVE

Examiner

Tamra L. Dicus

Art Unit

1774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 5, 17-18 is/are pending in the application.
- 4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The RCE is acknowledged.

#### ***Election/Restrictions***

Newly submitted claims 17-18 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the claims are directed to an apparatus including two different species of Moth not in the originally presented article claims. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 17-18 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

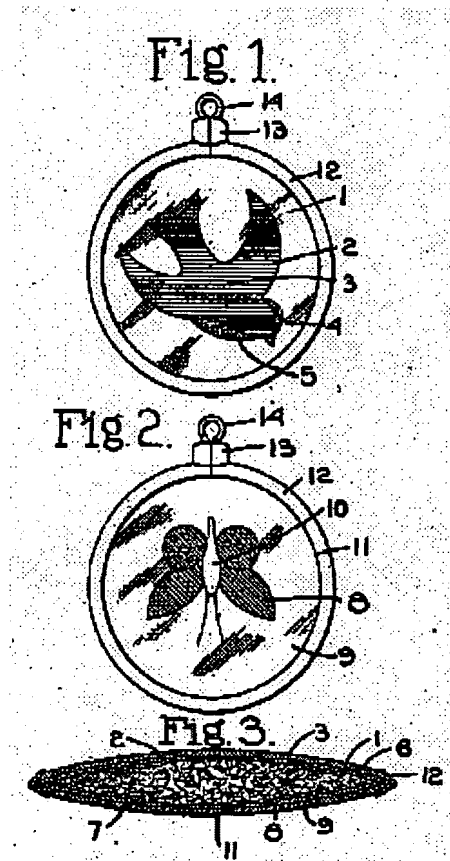
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by William Sidebottom et al.

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Sidebottom et al. illustrates a camouflage pattern comprising at least one image of a flying insect (10, FIG. 2 and associated text), in this case a blue butterfly and its associated parts wherein part of the at least one butterfly comprises an image of the wings of the butterfly (8, FIG. 2 and associated text) on an article such as an ornamental device. See Figs. 1-2 below.



Claim 1 is met.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,577,271 to Davis in view of US 6,342,290 to Conk.

Davis teaches an insect barrier headgear known as a safari hat (3:1-5) of metal, plastic, or cloth (2:30-50) and including a veil that can be printed with a camouflage pattern to aid in concealment of the wearer in activities such as hunting (4:29-61). Davis explains that his invention protects the wearer from insects in outdoor environments, such as mosquitos, flies, fleas and the like (embracing butterflyies and moths) (1:12-15). Claims 1 and 5 are addressed.

Davis does not explicitly state the camouflauge pattern includes images of insects or their parts (claim 1), or plants and their parts (claim 5).

However, because Davis teaches that insects such as flies are in outdoor environments and teaches the veil has camouflage patterns to aid in concealment from hunting, it would have been obvious to one having ordinary skill in the art to conceptualize the camouflage pattern of Davis would have been of images of flies when one is hunting insects or flies and the like. For instance, a well-known insect, the honeybee, would be an example of an insect sought after for a hunter to obtain honey.

Moreover, Conk teaches patterns for camouflage taken with a photograph of any environment and its' landscape including marsh environments and images of plants (bushes). See Abstract, col. 2, col. 4. Conk also teaches that it is known that camouflage prevents people from being detected by other people and animals (1:15-16), and that a good camouflage allows

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hunters to avoid startling wildlife (1:16-17). Conk teaches his pattern for camouflage includes taking photographs and selecting photographic images that represent the landscape features in the selected environment which realistically blends the images for camouflage patterns. Such a landscape implied would be a landscape of a flying insects that exist in nature such as the marsh environment taught by Conk. See 2:30-68, 4:40-60, 5:3.

Because Conk teaches any environment can be recreated by taking photographs of landscapes and that it is known that camouflage is known for preventing detection of animals, it would have been obvious to one having ordinary skill in the art to add images of insects and plants and their inherent parts to the article of Davis in order to blend well with an insect infested environment and to aid in avoiding detection when hunting flying insects as taught by Conk (see citing above) and as suggested by Davis (see explanation above). Further images shapes are optimizable. It has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284. Size of an article ordinarily is not a matter of invention. The size recitations are all deemed matters of choice involving differences in degree and/or size and are not patentable distinctions. *In re Rose*, 105 USPQ 237.

### ***Response to Arguments***

Applicant's arguments reply on 7/31/07 against Sanders (US 5,773,101) are not convincing because Sanders still teaches taking photographs of actual animals and using them as camouflage. Sanders does not have to explicitly state the animals are wings and their parts because when one having ordinary skill in the art thinks about what animals are, it is not a stretch to visualize an insect while one is hunting it. See also the rejections above to this argument.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamra L. Dicus whose telephone number is 571-272-1519. The examiner can normally be reached on Monday-Friday, 7:00-4:30 p.m., alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 9, 2007



MILTON I. CANO  
SUPERVISORY PATENT EXAMINER



Tamra L. Dicus  
Examiner  
Art Unit 1774